Department of State Health Services Agenda Item for State Health Services Council October 10-11, 2007

Agenda Item Title: Proposed repeal of 25 TAC §§411.401 – 411.414, concerning the TDI and Family Program	MHMR In-Home	
Agenda Number: 4-e		
Recommended Council Action:For Discussion OnlyX_For Discussion and Action by the Council		
Background: The In-Home and Family Support Program was developed to provide assistance to persons with mental disabilities and their families to support a person's ability to live at home, or integration into the community, or promotion of self-sufficiency. The Program has always been contingent upon the availability of funds.		
Summary: The repeals are proposed because the program has not been funded for several years and there is no indication or expectation that funding will be provided in the future. The proposal also implements the required Government Code, §2001.039, agency review of rules because the department has determined that rules governing the program are no longer necessary. Repeal of the rules will have no fiscal impact.		
Summary of Stakeholder Input to Date (including advisory committees): The Texas Council for Community MHMR Centers and the Mental Health Advisory Council (MHPAC) were invited by email to provide informal input regarding the proposed repeals. Several members of the MHPAC requested and received clarification about the reasons for the repeal via email.		
Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item # <u>4-e</u> .		
Agenda Item Approved by: Joe Vesowate Presented by: Mike Maples Title: Director Program Services Section	Date Submitted July 16, 2007	
Presented by: Mike Maples Title: Director, Program Services Section Program/Division: MHSA Contact Name/Phone: Janet Fletcher, 512/419-2673		

Form Revised: 4/25/05 by CCEA

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 411. State Mental Health Authority Responsibilities
Subchapter I. TDMHMR In-Home and Family Support Program
Repeal §§411.401-411.414

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§411.401 – 411.414, concerning the in-home and family support program.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001(Administrative Procedure Act). Sections 411.401 - 411.414, relating to TDMHMR In-Home and Family Support Program, have been reviewed and the department has determined that the reasons for adopting these sections no longer exist, and the rules are proposed for repeal. Funding for the services addressed by these rules has not been provided for several years. There is no indication nor reasonable expectation that funds will be appropriated by the legislature for these services in the future.

SECTION-BY-SECTION SUMMARY

Chapter 411, Subchapter I, concerning the in-home and family support program is being repealed in its entirety. Because this program is no longer being funded, rules governing the program are unnecessary.

FISCAL NOTE

Machelle Pharr, the department's Chief Financial Officer, has determined that for each year of the first five-year period that the repeal of the sections will be in effect, there will be no fiscal implications to state or local governments as the program will not exist.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Wilson Day, Director of the department's Budget Section, has also determined that there will be no effect on small businesses or micro-businesses to comply with the sections as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices as a result of the repeals. There are no anticipated economic costs to persons as a result of the proposed repeals, and there is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Joe Vesowate, the department's Assistant Commissioner for Mental Health and Substance Abuse Services, has also determined that for each year of the first five years the repealed sections are in effect, the public will benefit. The public benefit anticipated as a result of repealing the sections is that the department will maintain a clear, concise set of relevant rules and eliminate potential for confusion.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, \$2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the repeals would not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of Government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed repeal may be submitted in writing to Janet Fletcher, Department of State Health Service, Mail Code 2082, 909 West 45th Street, Austin, Texas 78751, or by e-mail to <u>janet.fletcher@dshs.state.tx.us</u>. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

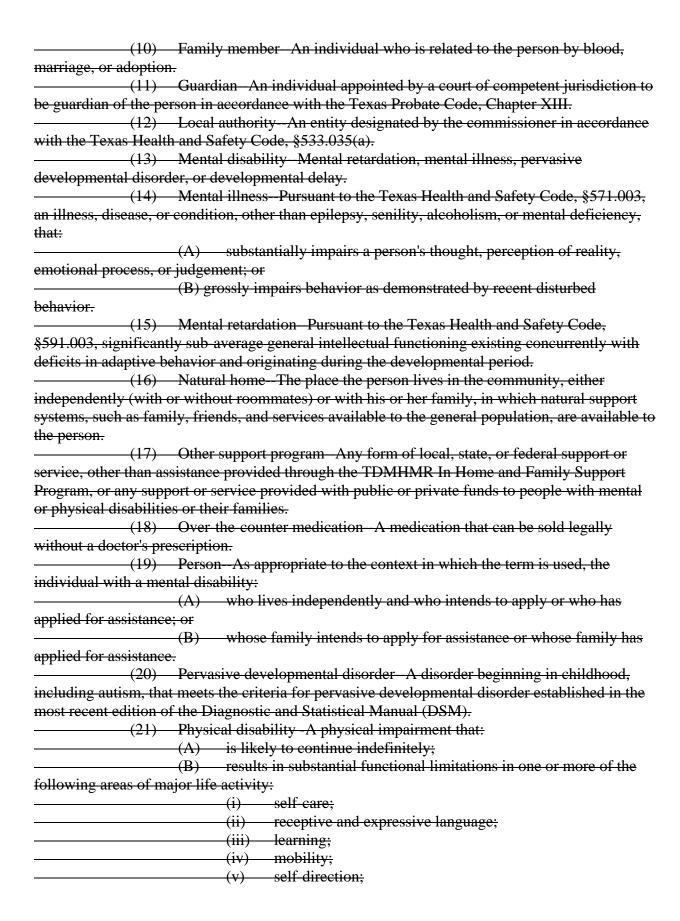
The proposed repeals affect the Government Code, Chapter 531, Health and Safety Code, Chapters 533, 535, and 1001. Review of the sections implements Government Code, §2001.039.

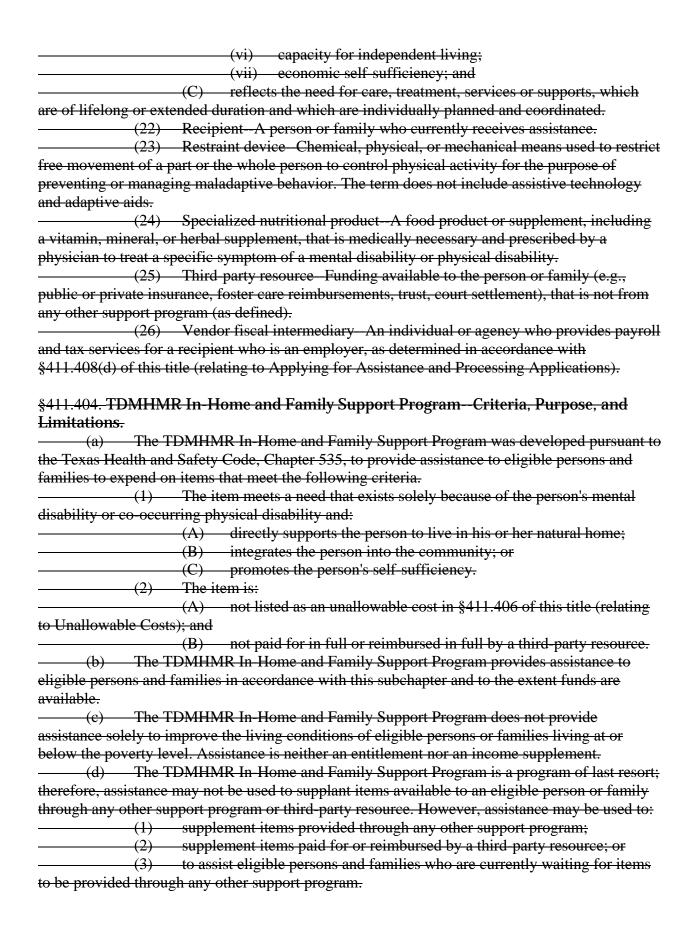
Sections for Repeal

- §411.401. Purpose.
- §411.402. Application.
- §411.403. Definitions.
- §411.404.TDMHMR In-Home and Family Support Program--Criteria, Purpose, and Limitations.
- §411.405. Allowable Costs.
- §411.406. Unallowable Costs.
- §411.407. Eligibility Determination.
- §411.408. Applying for Assistance and Processing Applications.
- §411.409. Written Plan and Disbursing Assistance.
- §411.410. Administrative Implementation.
- §411.411. Appeal.
- §411.412. Exhibits.
- §411.413. References.
- §411.414. Distribution.

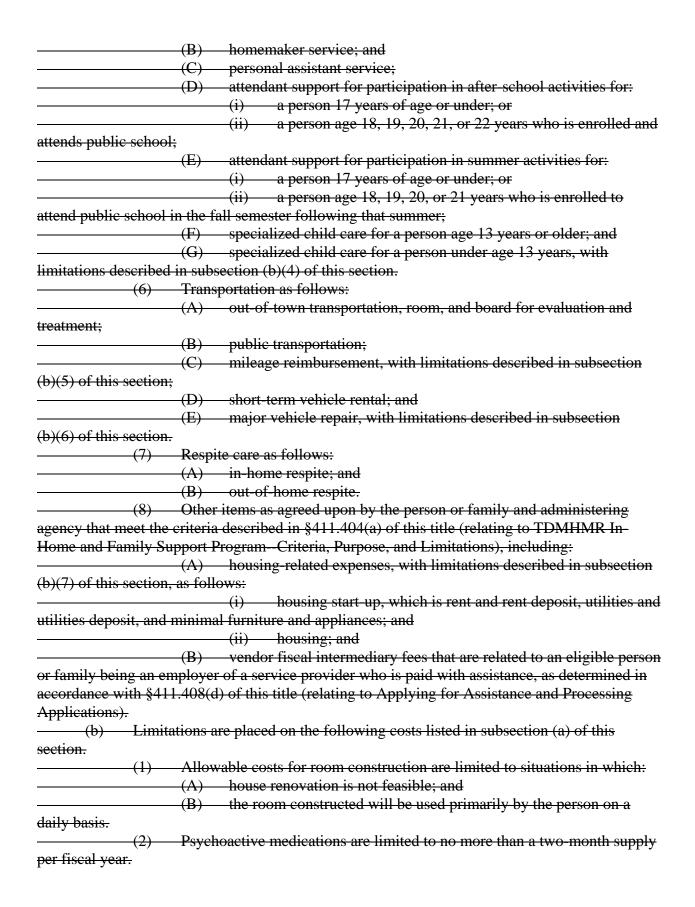
administering the TDMHMR In Home and Family Support Program. Application. This subchapter applies to administering agencies designated by TDMHMR to administer the TDMHMR In-Home and Family Support Program. §411.403. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise: (1) Adaptive aid-A device that enables a person to perform or participate in daily living activities or to control his or her living environment. (2) Administering agency--An entity that TDMHMR designates to administer the TDMHMR In-Home and Family Support Program in a specified area. (3) Assistance A subsidy granted under the TDMHMR In Home and Family Support Program to a person or family to expend on items that meet the criteria described in §411.404(a)(1)-(2) of this title (relating to TDMHMR In-Home and Family Support Program-Criteria, Purpose, and Limitations). (4) Assistive technology - A product, device, or equipment that is used to maintain, increase, or improve the functional capabilities of a person to perform or participate in daily living activities or to control his or her living environment. Co-payment percentage-The percentage of assistance that the recipient must pay for an item. (6) Date of eligibility—The documented date that the administering agency determines the person or family is eligible for assistance in accordance with §411.407 of this title (relating to Eligibility Determination). (7) Developmental delay--Pursuant to the Interagency Council on Early Childhood Intervention's rules governing early childhood intervention §621.22(9) of this title (relating to Definitions), a significant variation in normal development in one or more of the following areas as measured and determined by appropriate diagnostic instruments or procedures administered by an interdisciplinary team and by informed clinical opinion: (A) cognitive development: (B) physical development, including vision and hearing, gross and fine motor skills, and nutrition status: (C) communication development; (D) social and emotional development; and (E) adaptive development. **Emergency--A documented:** (A) life-threatening situation of a person; (B) impending out of home placement of a person; or (C) impending psychiatric hospitalization of a person. (9) Family--Those individuals who live with the person in the person's natural home, and who may include: (A) the person's family members (as defined); (B) the person's guardian; and (C) no more than three unrelated individuals or individual groups. For the purposes of this subchapter, an individual group is two or more individuals who are related to each other.

§411.401. Purpose. The purpose of this subchapter is to describe the requirements for



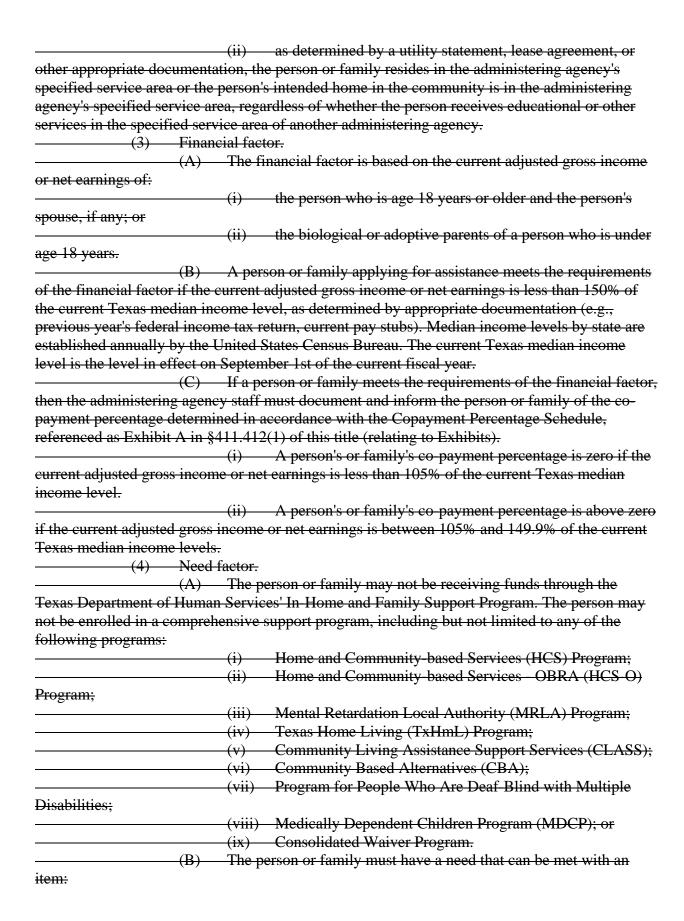


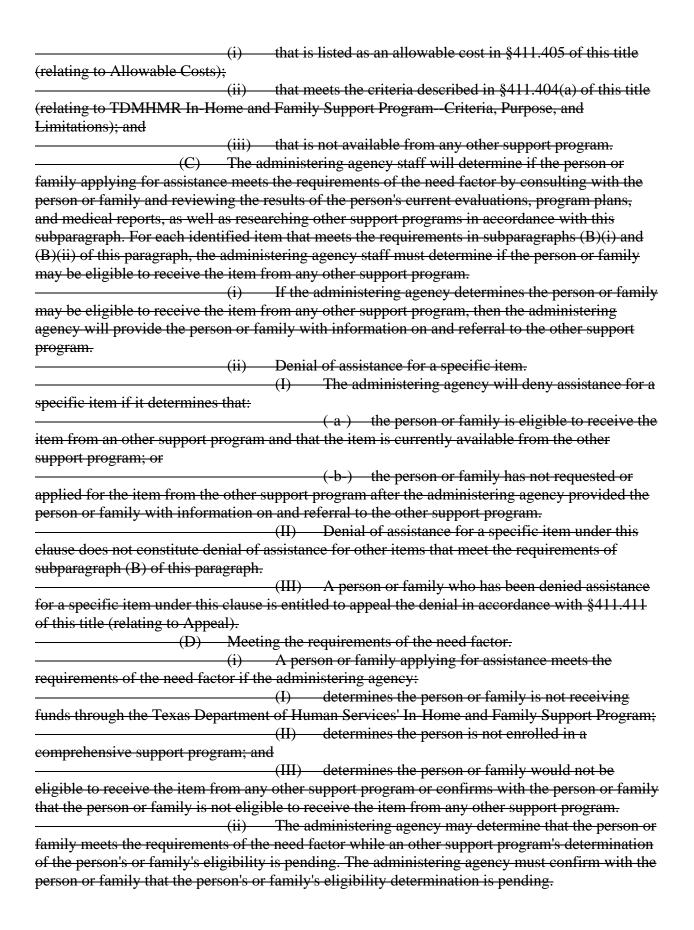
§411.405. Allowable	e Costs.
(a) Assist	tance may be used to pay for any item described in this section if the item
	scribed in §411.404(a) of this title (relating to TDMHMR In-Home and
	gramCriteria, Purpose, and Limitations).
	Special equipment as follows:
	(A) therapy equipment, as recommended by a physical or occupational
therapist following e	
	(B) motorized or hand-powered lift;
	(C) mobility equipment, as recommended by a physician, or physical
or occupational thera	apist following evaluation;
	(D) medical equipment, as prescribed by a physician; and
	(E) assistive technology (as defined), as recommended by a physical,
occupational, or spec	ech therapist following evaluation.
	Architectural modifications to the person's natural home as follows:
	(A) ramp, porch, or sidewalk;
	(B) handrail;
	(C) room construction, with the limitations described in subsection
(b)(1) of this section	
` / ` /	(D) house renovation.
	Health services as follows:
	(A) therapy, as recommended by a physician, or physical,
occupational or spec	ech therapist following evaluation;
	(B) diagnostic service;
	(C) medication, as prescribed by a physician, with the limitations
described in subsecti	ion (b)(2) of this section;
	(D) surgery, as recommended by a physician, or oral surgery, as
recommended by a d	
	(E) laboratory service, as prescribed by a physician;
	(F) dental, as recommended by a dentist;
	(G) non durable or disposable supply;
	(H) adaptive aid (as defined), as recommended by a physical or
occupational therapi	st following evaluation; and
	(I) specialized nutritional product, as prescribed by a physician, with
the limitations descri	ibed in subsection (b)(3) of this section.
(4)	Counseling and training services as follows:
(4)	(A) counseling;
	(B) behavior therapy;
	(C) behavioral coach service provided under the supervision of a
behavior therapist;	(e) behavioral coach service provided under the supervision of a
	(D) independent or daily living training;
	(E) family or caregiver training;
	— (E) — family of caregiver training, — (F) — job coach services; and
	— (F) — job coach services, and — (G) — remedial education for an adult.
(5)	— Home care services as follows:
(3)	
	(A) home health aide service, as prescribed by a physician;

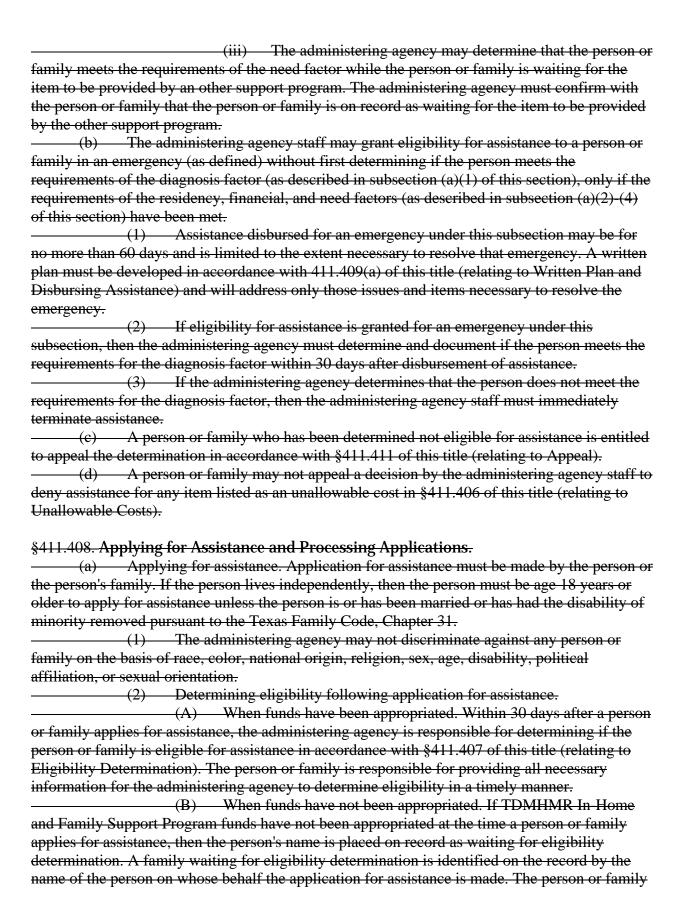


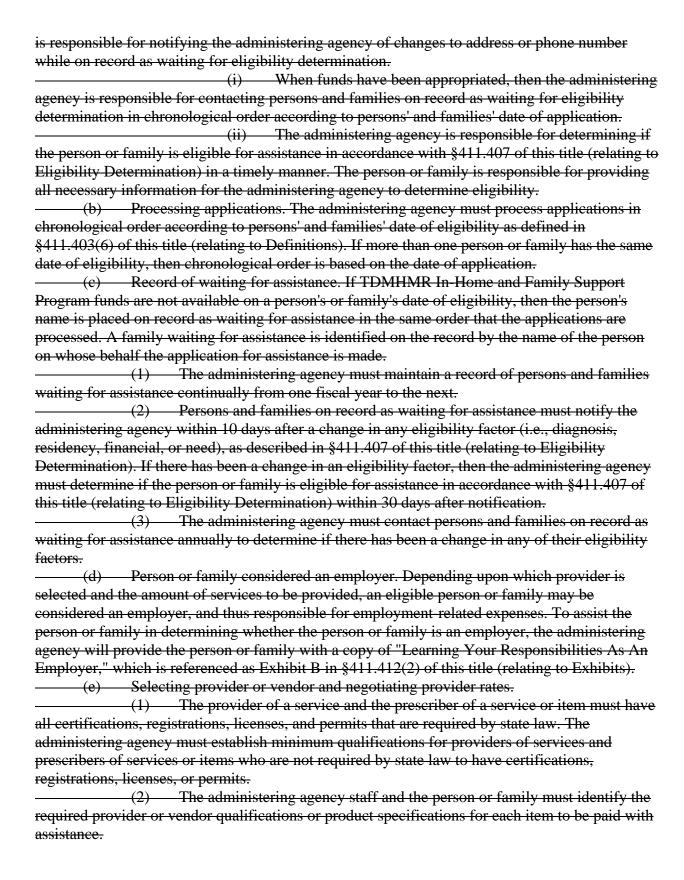
	3)	Allowable costs for a specialized nutritional product (as defined) are
limited to those	costs	in excess of routine food and nutritional costs.
	4)	Allowable costs for specialized child care for a child under the age of 13
years are limited	l to t l	hose costs in excess of the prevailing rate for routine child care.
		Mileage reimbursement may not exceed the state-reimbursed mileage rate.
		Limitations on major vehicle repair.
		(A) Allowable costs for major vehicle repair are limited to costs
necessary:		J 1
		(i) for the vehicle to be legally operational; and
		(ii) to repair the vehicle's air conditioning if the vehicle is the
person's primary	v mo	de of transportation and a physician determines that the person requires air
		raveling in the vehicle.
		(B) Major vehicle repair does not include routine vehicle maintenance.
	7)	Housing-related expenses are limited to no more than two months per
fiscal year.	• •	Troubing related expenses are immed to no more than two months per
iisour your.		
8411.406. Unal	lowa	ble Costs. Assistance may not be used to pay for any item listed in this
section:	10114	is a costs. Historiance may not be used to pay for any nominated in this
	1)	purchase or long-term lease of a vehicle, or routine vehicle maintenance;
		an expense that is incurred before the written plan is approved;
		income or property tax;
		abortion or emergency room service;
		a segregated service or activity (i.e., a service or activity that is targeted
		h a mental disability or physical disability), except for health services and
Allowable Costs		ng services as described in §411.405(a)(3)-(4) of this title (relating to
		any inayyan aa maaniyan
		any insurance premium;
,	,	a burial or funeral expense;
		food that is not a specialized nutritional product;
		routine shelter, routine utilities, routine home repair, routine home
		ome furnishing, and yard work;
,		over the counter medication;
	11)	architectural modifications to any building except the person's natural
home;		
		an expense related to the person's recreation;
		school tuition or fee, or any educational support item required by law to be
-	-	ic school system;
		school tuition or fee, or any educational support item for a child who is
		chool or who is home-schooled;
		restraint device (as defined);
	16)	routine child care for a child under the age of 13 years;
		any service provided by an individual under the age of 18 years or by an
		es in the same household as the person; and
		general medical care that is not related to a mental disability or co-
		isability, as determined by TDMHMR, including but not limited to:
		(A) physical examination;

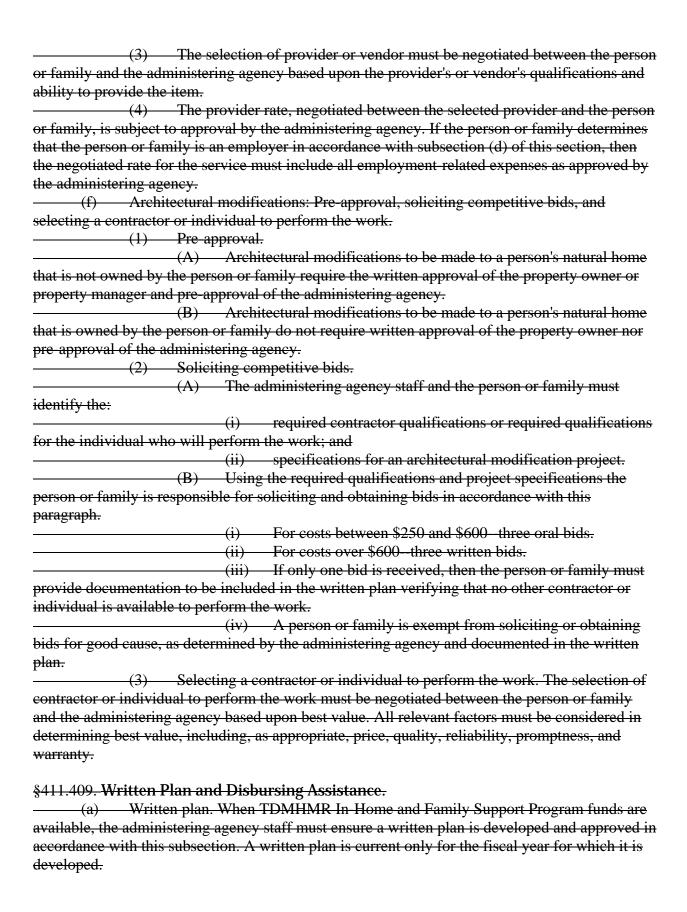
(B)	-cancer treatment;
(C)	heart disease treatment;
(D)	sleep apnea treatment; and
	treatment for diabetes.
(=)	
§411.407. Eligibility Deter	mination.
$\frac{3}{2} \frac{111.107. \text{ Eligibility Determine}}{2} \frac{1}{2} 1$	amily is eligible for assistance if the administering agency
	ents of the diagnosis, residency, financial, and need factors as
	are met. Eligibility for assistance must be re-determined each fiscal
year that a person or family	
——————————————————————————————————————	
(A)	The person must:
	(i) have a mental illness diagnosed within the previous 12
months;	
	(ii) have a diagnosis of mental retardation;
	(iii) have a diagnosis of pervasive developmental disorder; or
	(iv) be younger than four years of age and:
	(I) have a developmental delay diagnosed within the
previous 12 months; or	(1) have a developmental delay diagnosed within the
previous 12 months, or	
• , , , , .	(II) determined to be eligible for early childhood
intervention services.	
——————————————————————————————————————	The person meets the requirements of the diagnosis factor if:
	(i) the person or family submits a diagnosis or evaluation from
a practitioner licensed or cer	tified in a relevant profession that indicates the person meets the
requirement in subparagraph	(A) of this paragraph. The administering agency may require
additional evaluations or doc	
	(ii) a professional staff of the administering agency who is
licensed or certified in a rele	vant profession determines that the person meets the requirement in
	agraph. The administering agency may require additional
evaluations or documentation	
	
(2) Reside	· · · · · · · · · · · · · · · · · · ·
	The person must be currently living in his or her natural home, or
	n institutional setting and moving into a home in the community.
	The person or family applying for assistance meets the
requirements of the residence	y factor if:
	(i) the person's natural home or intended home in the
community is not:	•
	(I) an establishment that furnishes room, board, and
ganaral supervision in which	four or more unrelated individuals reside;
general supervision in which	(II) a residential facility certified or licensed to provide
complete that include but are	• • • • • • • • • • • • • • • • • • •
	not limited to, 24 hour supervision, home management, meals,
	d recreational activities (e.g., Intermediate Care Facility for the
Mental Retarded (ICF/MR),	state mental retardation facility); or
	(III) an inpatient facility (e.g., state mental health
facility, general or psychiatri	ic hospital); and

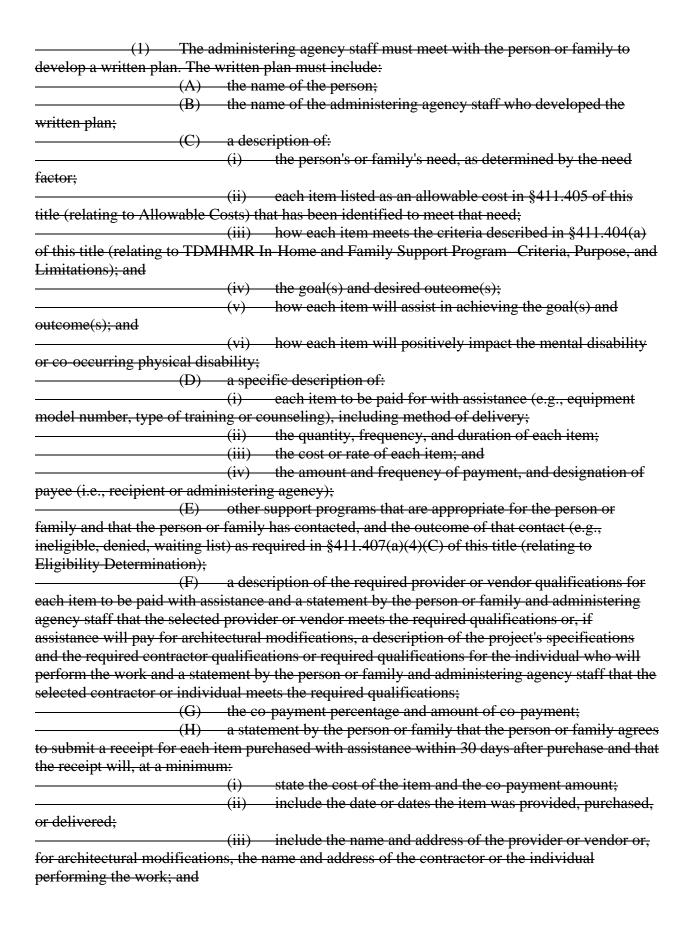


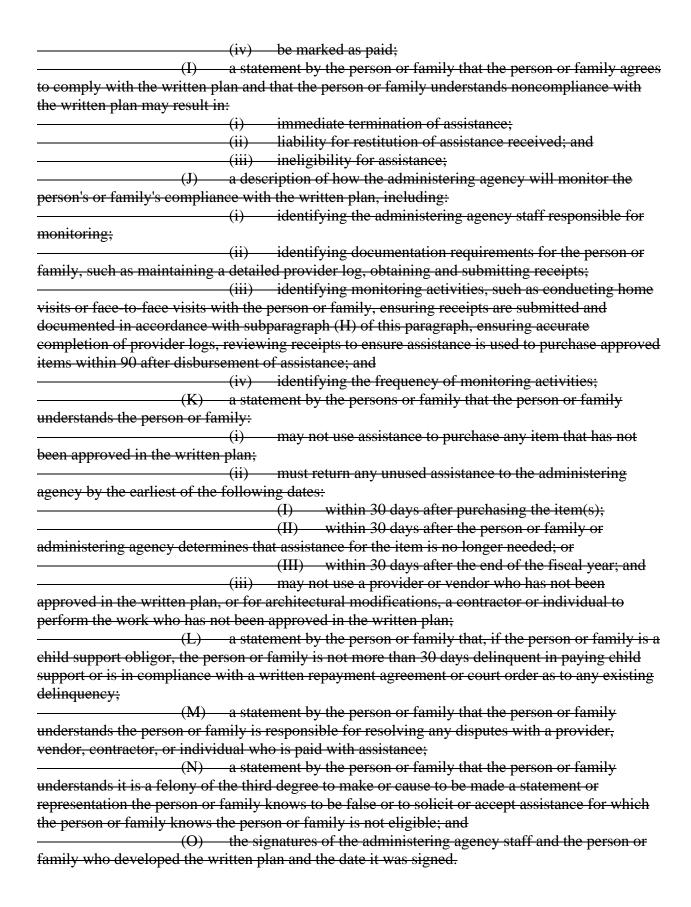


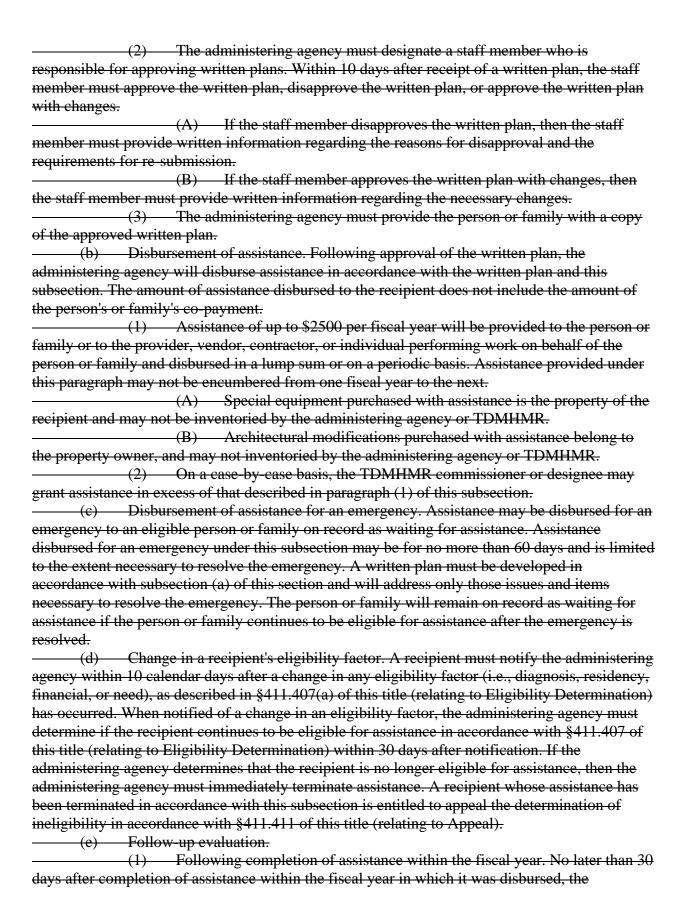


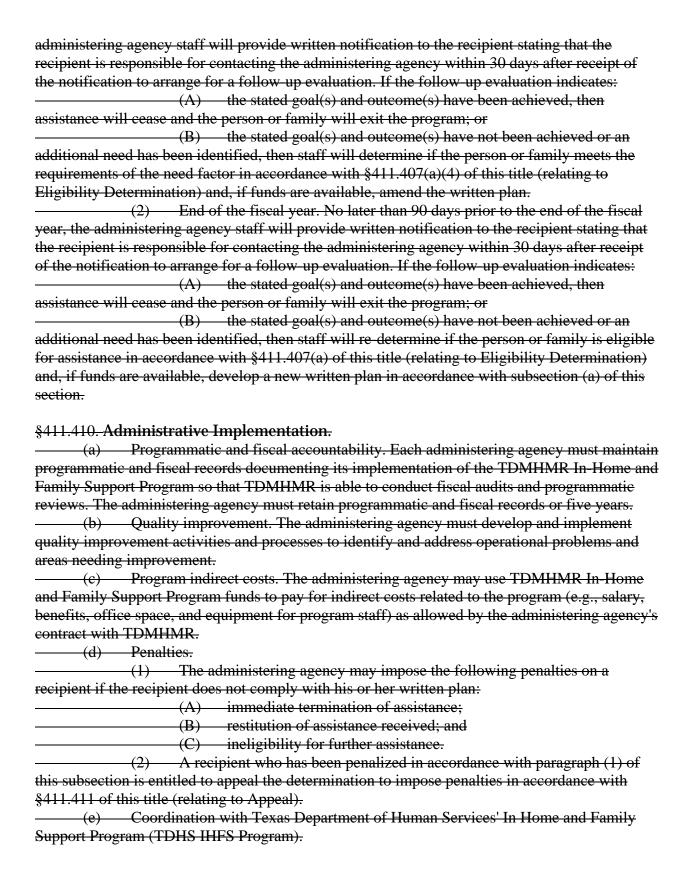


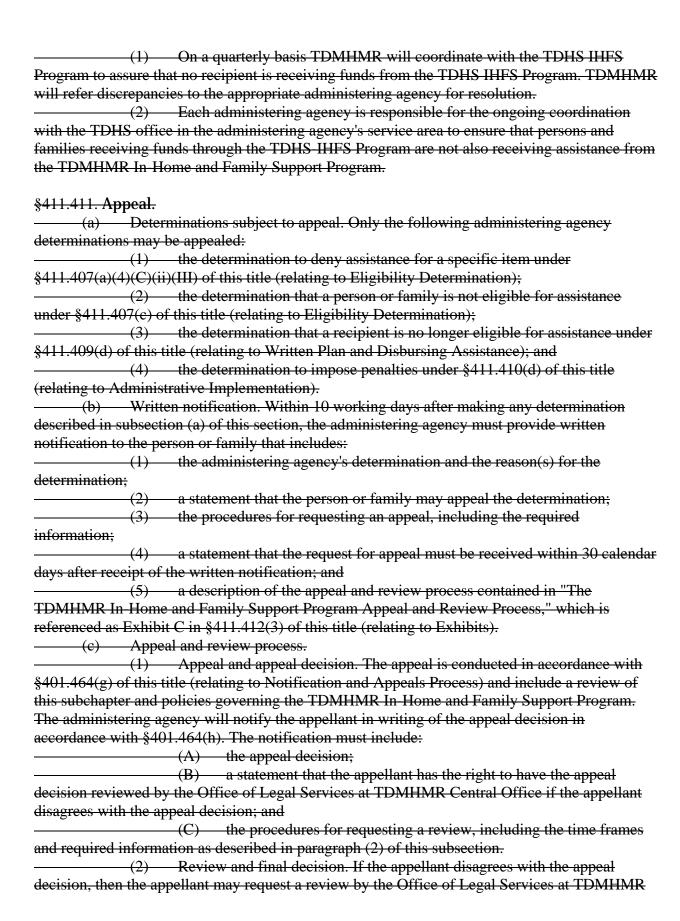












Central Office. A request for review must be submitted to TDMHMR, Director of Legal
Services, P.O. Box 12668, Austin, Texas, 78711-2668, and received within 10 working days
after the appellant receives the appeal decision. The written request must include the appellant's
name, address, telephone number with area code, the name of the administering agency, a copy
of the appeal decision, and an explanation of why the appellant does not agree with the appeal
decision.
(A) The appellant may choose to have the reviewer conduct the review
(i) by telephone conference with the appellant and a
representative from the administering agency providing verbal testimony and submitting
documentation; or
,
(ii) by desk review with the appellant and a representative from
the administering agency submitting documentation.
(B) The review will be conducted no sooner than 10 working days
after receipt of the request for review and be completed no later than 30 working days after
receipt of the request unless an extension is granted by the director of legal services
(C) The review will include an examination of:
(i) the appeal decision;
(ii) all verbal testimony if the review was conducted by
telephone conference;
(iii) all documentation submitted by the appellant and the
administering agency; and
(iv) this subchapter and the In Home and Family Support
Program Manual.
(D) The reviewer may consult with TDMHMR staff who administer the
TDMHMR In-Home and Family Support Program and staff who are responsible for the policy
contained in the rules governing the program.
(E) The reviewer will make a final decision that will uphold, reverse, or
modify the appeal decision.
(F) Within five working days after the review, the reviewer will send written
notification of the final decision to the appellant and the administering agency.
(G) The administering agency will take appropriate action consistent with the
final decision.
§411.412. Exhibits. The following exhibits are referenced in this subchapter, copies of which
are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, TX
78751:
(1) Exhibit A - Copayment Percentage Schedule;
(2) Exhibit B "Learning Your Responsibilities As An Employer"; and
(3) Exhibit C - "The TDMHMR In-Home and Family Support Program
Appeal and Review Process."
Appear and Review 110ccss.
§411.413. References. Reference is made in this subchapter to the following statutes and rules:
(1) Texas Health and Safety Code, Chapter 535, §533.035(a), §571.003, and
§591.003;
(2) Texas Family Code, Chapter 31;
(3) Texas Probate Code, Chapter XIII:

(4) (5)	TAC §48.2703(d) of Title 40 (relating to Income Eligibility); and TAC §621.22(9) of this title (relating to Definitions).
§411.414. Distribut	ion. This subchapter shall be distributed to:
(1)	members of the Texas Mental Health and Mental Retardation Board;
(2)	executive, management, and program staff of TDMHMR Central Office;
(3)	executive directors of all administering agencies; and
(4)	advocacy organizations.